IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.274 OF 2005

...

Union of India ...Petitioners

v/s.

M/s.Krafters Leasing ...Respondents

...

Mr.T.J.Pandian for the Petitioners.

Mr.R.D.Dhanuka i/b Mr.V.L.Panjawani for the Respondents.

...

CORAM: D.K.DESHMUKH, J.

DATED: 6TH DECEMBER,2005

P.C.:

1. By this petition the Petitioner challenges the award made under Section 34 of the Arbitration Act,

1940. The Petitioner challenges the award made by the learned arbitrator only against claim No.11 and claim No.13.

2. By his award against claim No.11 the learned arbitrator has awarded compensation against the Petitioner, for directing the claimant to keep the bank guarantee in force beyond 22-2-1991. The learned arbitrator has held that the work was completed on 23-8-1989. Warranty period was of 18 months and warranty period expired on 22-9-1991 and therefore, there was no justification for directing the contractor to keep the bank guarantee alive beyond 22-2-1991.

3. The defence of the Petitioner was that the clause in the contract requires the bank guarantee to be kept alive till all claims made against the Petitioner are decided, and therefore, as the reference to arbitration was pending it was necessary for the contractor in terms of the contract to keep the bank guarantee alive. The submission of the learned Counsel appearing for the Petitioner is that the finding of the learned arbitrator in relation to relevant clause in the contract is contrary to the

terms in the contract, which requires the bank guarantee to be kept alive till all claims, even the claims against the Petitioner are decided.

4. The learned Counsel appearing for the Respondent, on the other hand, submits that there is a purpose for which the bank guarantee is required to be given by the contractor. The purpose is to secure the claims of the Petitioner that may be against the contractor. But, if admittedly there is no claim against the contractor and claims were only by the contractor against the Petitioner, then no purpose would have been served by keeping the bank guarantee given by the contractor alive. According to the learned Counsel, the learned arbitrator has construed the relevant clauses in the contract considering the purpose for which the bank guarantee is given. The construction placed on the clause by the learned arbitrator is reasonable construction and therefore this court would not be justified in disturbing this finding.

5. In my opinion, there is a considerable substance in the submission made on behalf of the Respondent. The definite purpose behind the provision directing

the contractor to furnish the bank guarantee is to secure the claims that the Petitioner may have against the contractor. But once the warranty period is over and the Petitioner has no claim against the contractor, then merely because the contractor has made some claims against the Petitioner cannot be the justification for directing the contractor to keep the bank guarantee alive. I find that the construction that is placed on the clauses of the contract by the arbitrator is a reasonable construction and therefore the award made against claim No.11 cannot be set aside.

6. The Petitioner also challenges the award made against Claim No.13. By that part of the award the learned arbitrator has awarded payment of interest pendente lite. According to the Petitioner, the learned arbitrator does not have power to award interest pendente lite in view of clause 1.15 of the contract. That clause reads as under:-

> 1.15 Interest on Amounts- No interest will be payable upon the earnest money or the Security deposit or amounts payable to the Contractor under the contract but

> Government securities deposited in terms of clause 1.14.4 will be repayable with interest accrued thereon.

7. In the submission of the learned Counsel for the Petitioner, according to this clause no interest is payable on amounts payable to the contractor under the contract, and therefore, the learned arbitrator does not have power to award interest even pendente lite. An identical clause in the contract has been considered by the Division Bench of this court in the case of Union of India v/s. Anand Builders by judgment dated 2nd July, 1997 and the Division Bench has held that such a clause does not prevent the arbitrator from awarding interest pendente lite. Thus, in view of the judgment of the Division Bench of this Court, clause 1.15 does not operate to prevent the arbitrator from awarding interest. The arbitrator had the power to award interest pendente lite and therefore the arbitrator has awarded the interest. I do not see any illegality in the award. The arbitral tribunal in the present case was also constituted by intervention of the court and therefore as per the settled law laid down by the

Supreme Court under Section 34 of the Code of Civil Procedure, the arbitrator has the power to award the interest pendente lite in proceedings under the Arbitration Act, 1940. Thus, I do not find any justification for disturbing the award made by the learned arbitrator against claims Nos. 11 and 13. Petition, therefore, fails and is dismissed. Petitioner is directed to pay costs of this petition to the Respondent, as incurred by the Respondent.

5. Now, as the petition challenging the award has been dismissed, the award impugned in the petition is made rule of the court.

...